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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/514,425	11/16/2004	Xaver Wirth	566/42924	8645

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WASHINGTON, DC 20006

EXAMINER

TORRES, MELANIE

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/514,425

Applicant(s)

WIRTH, XAVER

Examiner

Melanie Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/16/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-13, 15-21 and 26-30 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 14 and 22-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/16/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in claim 15 which "spring" applicant is claiming since "tension springs," "spring elements," and a "cup spring" are all previously recited.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 8-11, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Salak et al. (US 2,943,713).

Re claims 1, 3, 8-11, and 27-30 Salak et al. disclose a brake pad for a disc brake of a vehicle comprising a carrier plate (11), several friction elements which when the brake is actuated, can be pressed onto the friction surface of a brake disc, fastened to the carrier plate adjacent a front side of the carrier plate, tension springs (22) supported on the rear side of the carrier plate facing away from the friction elements and the

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carrier plate being partially elastically deformable in an overlapping area of the friction elements.

5. Claims 1, 2, 10-12, 16-21 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Wirth (US 5,934,418).

Re claims 1, 2, 10-12, 16-21 and 30, Wirth discloses a carrier plate (7), several friction elements (3) which when the brake is actuated, can be pressed onto the friction surface of the brake disc, fastened to the carrier plate adjacent a front side of the carrier plate, tension springs (rear of nut in Figure 9) being supported on the rear side of the carrier plate facing away from the friction elements and a spring element (39) for each friction element (3) which spring element is supported on one side on the back of the friction element and on the other side on the front side of the carrier plate and forms a radial fixing of the friction element.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 13 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wirth.

Re claim 13, Wirth does not teach wherein the spring element is constructed as a cup spring. The examiner takes official notice that cup springs are a well known alternate equivalent means for providing resilience between two elements.

Re claims 26 and 28, Wirth does not teach wherein the spring elements or the carrier plate consist of a sheet steel. The examiner takes official notice that springs and carrier plates are known to be constructed of sheet steel.

Re claims 27 and 29, Wirth does not teach wherein the carrier plate consists of a casting material selected from one of a cast steel and cast aluminum or wherein the carrier plate is constructed as a deep-drawn steel sheet part. The examiner takes official notice that it is well known in the art for carrier plates to be made of steel for their strength. Further, the claim is deemed to be a product-by-process claim. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. (See MPEP 2113)

Allowable Subject Matter

8. Claims 5, 6, 14, and 22-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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9. Claim 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chang teaches a brake pad comprising a ball socket.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Torres whose telephone number is (571)272-7127. The examiner can normally be reached on Monday-Friday, 6:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on (571)272-7099. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MT

June 12, 2005

Melanie Torres
6-12-05